

BLD-333

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-1904

STANLEY J. CATERBONE,
Appellant

v.

NATIONAL SECURITY AGENCY, also known as NSA; DEFENSE ADVANCED
RESEARCH PROJECTS AGENCY, also known as DARPA; DEPARTMENT OF
DEFENSE; DEFENSE INTELLIGENCE AGENCY, also known as DIA; CENTRAL
INTELLIGENCE AGENCY, also known as CIA; FEDERAL BUREAU OF
INVESTIGATION, also known as FBI; UNITED STATES DEPARTMENT OF
JUSTICE; UNITED STATES ATTORNEY GENERAL; PENNSYLVANIA STATE
POLICE; PENNSYLVANIA ATTORNEY GENERAL; LANCASTER COUNTY
COMMISSIONERS; LANCASTER COUNTY CRISIS INTERVENTION;
LANCASTER COUNTY SHERIFFS DEPARTMENT; LANCASTER MAYOR
RICHARD GRAY; LANCASTER CITY BUREAU OF POLICE; DETECTIVE
CLARK BEARINGER, LANCASTER CITY BUREAU OF POLICE

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 5-17-cv-00867)
District Judge: Honorable Edward G. Smith

Submitted for Possible Dismissal Due to a Jurisdictional Defect; Possible Dismissal
Pursuant to 28 U.S.C. § 1915(e)(2)(B), or Possible Summary Action Pursuant to Third
Circuit LAR 27.4 and I.O.P. 10.6
August 10, 2017

Before: AMBRO, GREENAWAY, Jr., and SCIRICA, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted for possible dismissal due to a jurisdictional defect, possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B), and for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on August 10, 2017. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the appeal is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Marcia M. Waldron
Clerk

DATED: October 13, 2017



Certified as a true copy and issued in lieu
of a formal mandate on January 16, 2018

Teste: Patricia A. Deegan, C.
Clerk, U.S. Court of Appeals for the Third Circuit

BLD-333

NOT PRECEDENTIAL

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POLICE; PENNSYLVANIA ATTORNEY GENERAL; LANCASTER COUNTY
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Circuit LAR 27.4 and I.O.P. 10.6
August 10, 2017

Before: AMBRO, GREENAWAY, Jr., and SCIRICA, Circuit Judges

(Opinion Filed: October 13, 2017)

OPINION*

PER CURIAM

Stanley J. Caterbone, a self-described “victim of U.S. sponsored mind control and cointelpro harassment program,” appeals from the dismissal of his complaint by the United States District Court for the Eastern District of Pennsylvania. We will dismiss this appeal under 28 U.S.C. § 1915(e)(2)(B)(i).

We first consider our jurisdiction to consider this appeal. The District Court dismissed most of Caterbone’s claims with prejudice, but it dismissed others without prejudice, allowing Caterbone 30 days in which to file a second amended complaint concerning events surrounding his involuntary commitments in July 2015 and February 2016. Dkt. ##5, 6.¹ We have jurisdiction to consider final orders. Thus, we generally do not have jurisdiction to consider an appeal from an order where any of the claims have been dismissed without prejudice. See Borelli v. City of Reading, 532 F.2d 950, 951-52 (3d Cir. 1976) (per curiam). But because Caterbone did not file a second amended complaint within the time that the District Court allowed, the dismissal of his claims

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

¹ The Court also dismissed without prejudice claims surrounding an incident occurring on March 8, 2016, in Maryland, but allowed Caterbone to file a complaint as to that incident only in the United States District Court for the District of Maryland. Id.

without prejudice has become final. See Batoff v. State Farm Ins. Co., 977 F.2d 848, 851 n.5 (3d Cir. 1992).

Under 28 U.S.C. § 1915(e)(2)(B)(i), we must dismiss any action that “lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). We agree with the District Court that the claims of the amended complaint that were dismissed with prejudice consisted of rambling and vague allegations that lacked any arguable basis in fact. And to the extent any of the allegations were grounded in reality, those claims failed for the other reasons given by the District Court: (1) the complaint failed to comply with Rule 8 of the Federal Rules of Civil Procedure, as it lacked “a short and plain statement of the claim showing that the pleader is entitled to relief”; (2) there is no private right of action under the criminal statutes that Caterbone cites; (3) he attempted to sue entities that are immune to suit, such as federal agencies and the Pennsylvania State Police; and (4) many of his claims are barred by the two-year statute of limitations for civil rights claims. See Dkt. #5. As for the claims that were dismissed without prejudice, we agree with the District Court that those claims were also deficient.²

² While certain claims regarding the incident in Maryland might have been brought in the District Court, see 28 U.S.C. § 1391(e)(1), we agree with it that those allegations, and the ones regarding Caterbone’s involuntary psychiatric commitments in July 2015 and February 2016, were conclusory and that they failed to state a claim upon which relief could be granted. See Fantone v. Latini, 780 F.3d 184, 193 (3d Cir. 2015) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)) (to survive dismissal, complaint must have “sufficient factual matter[,] accepted as true[,] to state a claim to relief that is plausible on [its] face”).

Caterbone's motion for reconsideration also lacked merit. See Lazardis v. Wehmer, 591 F.3d 666, 669 (3d Cir. 2010) (per curiam). Because the motion did not raise any new law or new evidence, and failed to point out any error in the District Court's original decision that would require reconsideration, the District Court did not abuse its discretion in denying the motion.³

Similarly, Caterbone's notice of appeal and the document that he filed in support of this appeal do not give any reasons why the District Court's dismissal was in error. Rather, the documents simply repeat fantastical allegations from his amended complaint and add other similarly improbable allegations. We thus will dismiss the appeal.⁴

³ Instead, Caterbone claimed that the District court had intentionally confused the matter with two earlier cases and that the assignment of the matter to Judge Smith "must be reviewed." He concluded with a rambling discourse that appears to argue that the matter before the District Court was not a "complaint" but was instead a [motion for a] "preliminary injunction for emergency relief" and that it was meant to be a continuation of a complaint he filed in 2016. Caterbone's contentions do not adequately call into question the District Court's decision to dismiss the amended complaint.

⁴ Caterbone's Motion by Appellant for Leave to File an Overlength Argument in Support of the Appeal (ten pages instead of five) is GRANTED, as the document is not excessively long. However, Caterbone's Motion for Leave to File Exhibits to Argument in Support of the Appeal, his Motion for Leave to Lodge Exhibit "The Torture Memo" (submitted on flash drives, as directed by the Clerk), and his Motion to file Exhibit "NSA Whistleblower William Binney Affidavit July 11, 2017," are all DENIED. The proposed exhibits do not have any bearing on the propriety of the District Court's dismissal of his amended complaint. We advise Caterbone that the filing of frivolous, voluminous documents may lead this Court to rescind his electronic filing privilege. 3d Cir. L.A.R. 113.2(d) ("The clerk may terminate without notice the electronic filing privileges of any Filing User who abuses the system by excessive filings, either in terms of quantity or length.").

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v.

NATIONAL SECURITY AGENCY, et al.

(E.D. Pa. No. 5-17-cv-00867)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, MCKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE, RESTREPO,
and SCIRICA*, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who

*As to panel rehearing only.

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concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Anthony J. Scirica
Circuit Judge

Dated: January 4, 2018

CJG/cc: Stanley J. Caterbone

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STANLEY J. CATERBONE and
ADVANCED MEDIA GROUP,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY, or
NSA; DEFENSE ADVANCED
RESEARCH PROJECT AGENCY, or
DARPA; DEPARTMENT OF DEFENSE;
DEFENSE INTELLIGENCE AGENCY, or
DIA; CENTRAL INTELLIGENCE
AGENCY, or CIA; FEDERAL BUREAU
OF INVESTIGATION, or FBI; UNITED
STATES DEPARTMENT OF JUSTICE;
UNITED STATES ATTORNEY
GENERAL; PENNSYLVANIA STATE
POLICE; PENNSYLVANIA ATTORNEY
GENERAL; LANCASTER COUNTY
COMMISSIONERS; LANCASTER
COUNTY CRISIS INTERVENTION;
LANCASTER COUNTY SHERIFF
DEPARTMENT; LANCASTER MAYOR
RICK GRAY; LANCASTER CITY
BUREAU OF POLICE; DETECTIVE
CLARK BEARINGER, LANCASTER
CITY BUREAU OF POLICE,

Defendants.

CIVIL ACTION NO. 17-867

ORDER

AND NOW, this 28th day of April, 2017, the *pro se* plaintiff, Stanley J. Caterbone, having filed a notice of appeal on April 19, 2017 (Doc. No. 9), it is hereby **ORDERED** as follows:

1. The court hereby **CERTIFIES** that the appeal in this matter is not taken in good faith;¹ and

2. The Clerk of Court shall immediately notify the parties and the court of appeals that the court certified that the appeal was not taken in good faith as required by Rule 24(a)(4) of the Federal Rules of Appellate Procedure.

BY THE COURT:

/s/ Edward G. Smith
EDWARD G. SMITH, J.

¹ The United States District Court for the Middle District of Pennsylvania previously determined that the *pro se* plaintiff could proceed *in forma pauperis* with respect to the filing fee for his complaint. Doc. No. 1. Rule 24(a)(3) of the Federal Rules of Appellate Procedure provides that

[a] party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

- (A) the district court--before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or
- (B) a statute provides otherwise.

Fed. R. App. P. 24(a)(3).

The plaintiff originally commenced this action in the Middle District of Pennsylvania in late December 2016, and the Honorable Yvette Kane entered an order in early February 2017 transferring the matter to this court. Doc. No. 1. On March 28, 2017, this court entered an order and memorandum opinion in which the court dismissed almost all of the claims with prejudice under 28 U.S.C. § 1915(e)(2). Doc. Nos. 5-6. The court also dismissed without prejudice (1) his claims relating to a March 8, 2016 incident that took place in Maryland (but noted that he needed to file the claim in the District of Maryland), and (2) his claims surrounding involuntary commitments in July 2015 and February 2016. *Id.* The court permitted the plaintiff to file an amended complaint within 30 days of the order, *i.e.* April 27, 2017, but the amended complaint could only contain claims relating to the 2015 and 2016 involuntary commitments. *Id.* The plaintiff filed a motion to have the court reconsider the March 28, 2017 order, but since the motion did not set forth any appropriate grounds for reconsideration, the court denied the motion via an order on April 12, 2017. Doc. Nos. 7, 8. Instead of filing an amended complaint, the plaintiff filed a notice of appeal. Doc. No. 9.

Although almost the entirety of the text contained in the notice of appeal has nothing to do with the court's March 28, 2017 or April 12, 2017 orders (and instead relates to the plaintiff's purportedly precarious financial situation and his wide-ranging conspiracy claims involving harassment and mind control), it appears that the plaintiff misunderstands at least the court's March 28, 2017 order. He appears to believe that the court dismissed his amended complaint without leave to replead. *See* Notice of Appeal at ECF p. 7 ("On March 28, 2017 Judge Smith ARBITRARILY DISMISSED the case, and on APRIL 12, 2017 JUDGE SMITH DID THE SAME FOR A MOTION OF RECONSIDERATION, WHICH AFTER LEGAL REVIEW, PROVES AT LEAST GROSS INCOMPETENCE AND MOST LIKELY OBSTRUCTION OF JUSTICE AND PUBLIC CORRUPTION."). Other than his reference to the court's incompetence, corruption and desire to obstruct justice, the plaintiff does not really explain why he is appealing from the March 28, 2017 and April 12, 2017 orders.

To the extent that the plaintiff is arguing that the court's orders were the result of incompetence, an attempt to obstruct justice, or due to corruption, his arguments are frivolous. The appeal itself is also frivolous because he is not appealing from a final order, and he has not received permission to file an appeal. As such, the court certifies that the instant appeal is not taken in good faith and the plaintiff should not be permitted to proceed *in forma pauperis* on appeal. See 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."); see also *Ball v. Famiglio*, 726 F.3d 448, 462 n.19 ("A district court may certify that an appeal would not be taken in good faith, even if it dismissed the action on grounds other than frivolousness"), *abrogated in part by Coleman v. Tollefson*, 135 S. Ct. 1759, 1763 (2015).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STANLEY J. CATERBONE and
ADVANCED MEDIA GROUP,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY, or
NSA; DEFENSE ADVANCED
RESEARCH PROJECT AGENCY, or
DARPA; DEPARTMENT OF DEFENSE;
DEFENSE INTELLIGENCE AGENCY, or
DIA; CENTRAL INTELLIGENCE
AGENCY, or CIA; FEDERAL BUREAU
OF INVESTIGATION, or FBI; UNITED
STATES DEPARTMENT OF JUSTICE;
UNITED STATES ATTORNEY
GENERAL; PENNSYLVANIA STATE
POLICE; PENNSYLVANIA ATTORNEY
GENERAL; LANCASTER COUNTY
COMMISSIONERS; LANCASTER
COUNTY CRISIS INTERVENTION;
LANCASTER COUNTY SHERIFF
DEPARTMENT; LANCASTER MAYOR
RICK GRAY; LANCASTER CITY
BUREAU OF POLICE; DETECTIVE
CLARK BEARINGER, LANCASTER
CITY BUREAU OF POLICE,

Defendants.

CIVIL ACTION NO. 17-867

ORDER

AND NOW, this 28th day of March, 2017, after considering the complaint and amended complaint filed by the *pro se* plaintiff, Stanley J. Caterbone, on behalf of himself and Advanced Media Group (Doc. Nos. 1-1 – 1-6; 1-10 – 1-17), Caterbone’s “notice of appeal,” which the court has interpreted as a motion for reconsideration of Magistrate Judge Carlson’s January 9, 2017 report and recommendation (Doc. No. 1-25); and after also considering Caterbone’s (1) “Motion

to File Exhibit DVD” (Doc. No. 2), (2) “Motion to File Statement ‘Enough is Enough,’” which also contained a request for permission to file documents electronically (Doc. No. 3), and (3) “Motion to File Exhibit Titled ‘Letter to Huntingdon Bank Andrew Grimmit re March 7 Liquidation Offer March 17, 2017’” (Doc. No. 4); and for the reasons set forth in the separately-filed memorandum opinion, it is hereby **ORDERED** as follows:

1. The amended complaint is **DISMISSED WITH PREJUDICE** except as otherwise specified in the court’s memorandum opinion and in this order;

2. To the extent that the plaintiffs sought preliminary injunctive relief, the request is **DENIED AS MOOT** in light of the court’s dismissal of the amended complaint;

3. Caterbone’s claims based on the March 8, 2016 incident that took place in Maryland, as described further in the court’s memorandum opinion, are **DISMISSED WITHOUT PREJUDICE** to Caterbone filing a complaint against appropriate defendants in the District of Maryland. Caterbone may not file an amended pleading in this court based on those claims;

4. Caterbone’s claims based on the events surrounding his involuntary commitment in July 2015 and February 2016, as described further in the court’s memorandum opinion, are **DISMISSED WITHOUT PREJUDICE** to Caterbone filing a second amended complaint within thirty (30) days of the date of this order as to those claims only. Any amended complaint shall identify all defendants in the caption of the pleading. Additionally, any amended complaint shall, as clearly and briefly as possible, state the factual basis for Caterbone’s claims against each defendant, state the basis for the court’s jurisdiction over the claims, and state the relief that Caterbone seeks from this court. If Caterbone fails to file a second amended complaint within

the thirty (30)-day period set forth above, the court may dismiss this case without any further notice to him;

5. The “notice of appeal,” which the court has interpreted as a motion for reconsideration of Magistrate Judge Carlson’s January 9, 2017 report and recommendation (Doc. No. 1-25), is **DENIED**;

6. The “Motion to File Exhibit DVD” (Doc. No. 2) is **DENIED**;

7. The “Motion to File Statement ‘Enough is Enough,’” which also contained a request for permission to file documents electronically (Doc. No. 3), is **DENIED**; and

8. The “Motion to File Exhibit Titled ‘Letter to Huntington Bank Andrew Grimmit re March 7 Liquidation Offer March 17, 2017’” (Doc. No. 4) is **DENIED**.

BY THE COURT:

/s/ Edward G. Smith
EDWARD G. SMITH, J.

**Additional material
from this filing is
available in the
Clerk's Office.**